

CALIFORNIA DEPARTMENT OF INSURANCE  
LEGAL DIVISION

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**BEFORE THE INSURANCE COMMISSIONER  
OF THE STATE OF CALIFORNIA**

In the Matter of the Rates, Rating Plans, or  
Rating Systems of

GeoVera Insurance Company,  
Respondent.

File No. NC-2010-00003

**NOTICE OF NONCOMPLIANCE**

YOU ARE HEREBY NOTIFIED that the Insurance Commissioner of the State of California (hereinafter "Commissioner") has good cause to believe that the rating plans, rating systems and rates of Respondents, GEOVERA INSURANCE COMPANY (hereafter "Respondents") have violated California Insurance Code (hereafter "CIC") sections 481.5, 676, 678, 790.03, 790.03, 790.06, 1861.01, and 1861.05 and Title 10, California Code of Regulations (hereafter "CCR") sections 2360.2, 2360.3, 2360.4, and 2360.6. The manner and extent of the noncompliance is set forth below.

**GENERAL ALLEGATIONS**

1. Respondent is, and was at all relevant times, an insurer licensed to transact the business of insurance in the State of California.
2. Respondent transacts business as a stand-alone residential earthquake insurer subject to, *inter alia*, the provisions of CIC sections 337, 343, 481.5, 676, 678, 790.06 and 1861.05, and

also subject to the provisions of CCR, sections 2360.0, 2360.2, 2360.3, 2360.4, and 2360.6.

### **APPLICABLE LAW**

3. CIC section 676 limits an insurer's ability to cancel a policy except under certain limited, defined circumstances. Section 676 reads as follows:

After a policy specified in Section 675 has been in effect for 60 days, or, if the policy is a renewal, effective immediately, no notice of cancellation shall be effective unless it is based on the occurrence, after the effective date of the policy, of one or more of the following:

- (a) Nonpayment of premium, including nonpayment of any additional premiums, calculated in accordance with the current rating manual of the insurer, justified by a physical change in the insured property or a change in its occupancy or use.
  - (b) Conviction of the named insured of a crime having as one of its necessary elements an act increasing any hazard insured against.
  - (c) Discovery of fraud or material misrepresentation by either of the following:
    - (1) The insured or his or her representative in obtaining the insurance.
    - (2) The named insured or his or her representative in pursuing a claim under the policy.
  - (d) Discovery of grossly negligent acts or omissions by the insured or his or her representative substantially increasing any of the hazards insured against.
  - (e) Physical changes in the insured property which result in the property becoming uninsurable.
4. CIC section 678(a) provides that an insurer shall deliver or mail to the policyholder either an offer of renewal or a notice of nonrenewal at least 45 days prior to policy expiration.
5. CIC section 678(b) provides that in the event an insurer fails to provide such offer or notice, "the existing policy, with no change in its terms and conditions, shall remain in

1 effect for 45 days from the date that either the offer to renew or the notice of nonrenewal  
2 is delivered or mailed to the named insured.”

3 6. CIC section 678(b) also provides that a “notice to this effect shall be provided by the  
4 insurer” to the named insured.

5 7. CIC section 790.03(a) prohibits insurers from making statements misrepresenting the  
6 terms of any policy, and defines any such practice as unfair or deceptive.

7 8. CIC section 1861.05(a) provides that no rate can remain in effect if it is excessive,  
8 inadequate, unfairly discriminatory or otherwise in violation of Division 1, Part 2, Chapter  
9 9 of the Insurance Code. CIC section 1861.05(b) requires that every rate change must be  
10 filed with the Commissioner via a complete rate change application. Pursuant to CIC  
11 section 1861.01(c), an insurer cannot implement a rate change until after the  
12 Commissioner has approved the insurer’s rate application.

13 9. CCR section 2360.0(b) defines “eligibility guidelines” as “specific, objective factors,  
14 or categories of specific, objective factors, which are selected and/or defined by an insurer,  
15 and which have a substantial relationship to an insured's loss exposure.”

16 10. CCR section 2360.2 requires insurers to maintain eligibility guidelines for all lines of  
17 insurance in sufficient detail so that the appropriate rating plan can be determined for each  
18 insured. That section also provides that any insured who meets the guidelines must  
19 qualify to buy the insurance.

20 11. CCR section 2360.3 specifically provides: “An insurer shall charge each insured the  
21 lowest Premium for which the insured qualifies. At each policy renewal the insurer shall  
22 adjust the Premium charged to the insured, as necessary, to reflect the lowest Premium for  
23 which the insured qualifies at that time.”

24 12. CCR section 2360.4 provides that it is the insurer’s responsibility to determine and  
25 charge the lowest Premium for which an insured qualifies. If an insurer delegates this  
26 responsibility to an agent, the insurer remains responsible for its agent’s determination.  
27  
28

- 1 13. CCR section 2360.6 states that an insurer must keep documentation in the  
2 underwriting files of each policy issued that identifies all information considered by the  
3 insurer in determining the premium charged.

4 **ALLEGATION I:**

5 **RESPONDENTS' RENEWAL NOTICES VIOLATE CIC SECTION 678(a)**  
6 **BECAUSE THEY ARE MAILED OUT LATE, VIOLATE CIC SECTION 678(b)**  
7 **BECAUSE THEY FAIL TO EXTEND THE EXISTING POLICY, FURTHER**  
8 **VIOLATE SECTION 678(b) BECAUSE THEY FAIL TO PROVIDE NOTICE OF**  
9 **SUCH RIGHTS, AND RESPONDENTS' KNOWINGLY ERRONEOUS**  
10 **CANCELLATION NOTICES MISREPRESENT THE TERMS OF THE POLCY**  
11 **THEREBY MAKING THEM UNFAIR AND DECEPTIVE AS DEFINED IN CIC**  
12 **SECTION 790.03(a).**

- 13 14. The Respondent typically sends renewal notices to policyholders whose current policy  
14 term is nearing expiration.

- 15 15. Renewal policy premiums can, at times, increase by 200% - 300% over the premiums for  
16 the current policy.

- 17 16. Some renewal notices are sent greater than 45 days prior to the current policy expiration  
18 date and some are sent less than 45 days prior to the current policy expiration date.

- 19 17. When the renewal notice is sent less than 45 days prior to the current policy expiration,  
20 the renewal policy payment due date is extended and the policyholder is given the option, at  
21 his or her "special request," to extend the expiration date of the current policy, but only if the  
22 special policy extension request is submitted in writing through the insurance agent.

- 23 18. In those instances when the current policy premium renewal due date is indeed extended,  
24 the policyholder nevertheless receives a cancellation notice citing an erroneous cancellation  
25 date.

- 26 19. When the Respondent sends a renewal notice late, in violation of CIC section 678(a), the  
27 Respondent further fails to automatically extend the current policy expiration date, in  
28 violation of CIC section 678(b).

- 29 20. When Respondent sends a renewal notice late, in violation of CIC section 678(a), and  
30 further fails to automatically extend the current policy expiration date, in violation of CIC  
31 section 678(b), Respondent further violates 678(b) by failing to notify the policyholder of his

or her rights to extend the current policy and thereby increases the chances that the policyholder will pay for a more expensive policy earlier than required.

21. In further violation of CIC section 678(b), on such occasions when the policyholder is informed that the current policy expiration date is extended, the Respondent nevertheless mails to the policyholder a cancellation notice with erroneous cancellation dates which conflict with, and thereby obviate, any other previous notice or representation that the current policy term is, or may be, extended.

22. On such occasions when Respondent delivers erroneous cancellation notices, citing erroneous cancellation dates, Respondent misrepresents the terms of the policy and thereby engages in an unfair or deceptive practice in violation of CIC section 790.03(a).

**ALLEGATION II:  
RESPONDENTS' PRACTICE OF AUTOMATICALLY RENEWING POLICIES  
AND CHARGING A POLICYHOLDER'S CREDIT CARD, WITHOUT  
ADEQUATE NOTICE AND WITHOUT AFFIRMATIVE AUTHORIZATION, IS  
UNFAIR, DECEPTIVE, AND UNFAIRLY DISCRIMINATORY IN VIOLATION  
OF INSURANCE CODE SECTIONS 790.06 AND 1861.05(a).**

23. During transactions for new business, Respondent requires the policyholder to choose among three methods of paying for the policy: one full payment for the entire policy; three installment payments; or monthly installment payments.

24. If the payments are made by credit card or debit card, the policyholder is required to provide credit card or debit card information and the Respondent charges the policyholder's card accordingly.

25. Respondent continues to keep the policyholder's credit card or debit card information on file after the new or current policy is fully paid.

26. At least until July 2007, and possibly up to and including the present, during the transaction for a new policy, the policyholder is not notified of any potential for an automatic renewal policy transaction.

27. At least until July 2007, and possibly up to and including the present, during the transaction for the new policy, and when providing his or her credit card or debit card information to pay for the new policy, the policyholder is not notified that his or her credit or

debit card may later be charged for a renewal policy without affirmative authorization.

28. Respondent represents that “Currently, for all new business applications, we obtain authorization for the initial payment, as well as for future installments and renewal payments.”

29. When the new or current policy is nearing expiration, the Respondent mails a renewal notice to the policyholder.

30. The renewal notice inconspicuously notes that the policyholder’s credit card will be charged for a renewal policy.

31. The renewal notice inconspicuously notes that: “For withdrawal of credit card/checking account authorization, a written request should be received at least 30 days prior to the effective date of your new policy term.”

32. The renewal policy premium may be 100%, 200%, or even 300% higher than the current policy premium.

33. Without any further notice or any affirmative authorization whatsoever, Respondent charges the policyholder’s credit card or debit card for a renewal policy term.

34. Respondent’s practice of automatically renewing policies and charging policyholders’ credit cards without adequate notice and without affirmative authorization is unfair and deceptive, in violation of CIC section 790.06, because the practice is not clearly and adequately disclosed at the inception of the new policy.

35. Respondent’s practice of automatically renewing policies and charging policyholders’ credit cards without adequate notice and without affirmative authorization is unfair and deceptive, in violation of CIC section 790.06, because the policyholder is not given an opportunity to expressly consent to the automatic renewal offer.

36. Respondent’s practice of automatically renewing policies and charging policyholders’ credit cards without adequate notice and without affirmative authorization is unfair and deceptive, in violation of CIC section 790.06, because the policyholder, when providing his or her credit card or debit card information, is likely to believe that their card will only be charged for the new, or current policy and not for a renewal policy later.

1 37. Respondent's practice of automatically renewing policies and charging policyholders'  
2 credit cards without adequate notice and without affirmative authorization is unfair and  
3 deceptive, in violation of CIC section 790.06, because any notice regarding payment for a  
4 subsequent renewal term is ambiguously intertwined with a notice regarding installment  
5 payments for the new or current term.

6 38. Respondent's practice is unfairly discriminatory, in violation of CIC section 1861.05(a)  
7 because, as Respondent represents (in paragraph 28 above), Respondent provides more notice  
8 to new business than to renewal business.

9 **ALLEGATION III:**

10 **RESPONDENT'S PRACTICE OF REQUIRING POLICYHOLDERS TO FIND,**  
11 **INVESTIGATE, AND RESOLVE CONTRADICTORY DWELLING INFORMATION**  
12 **VIOLATES RESPONDENT'S 2008 SETTLEMENT AGREEMENT AND CCR**  
13 **SECTIONS 2360.3 AND 2360.4 BECAUSE RESPONDENT DOES NOT MAKE**  
14 **REASONABLE EFFORTS TO DETERMINE ACCURATE PROPERTY**  
15 **CHARACTERISTICS OR THE PROPER PREMIUM TO CHARGE.**

16 39. Property-specific data such as the square footage of a dwelling or the year built of a  
17 dwelling affects the rates and/or premiums of a policy.

18 40. In October of 2008, Respondent entered into a settlement agreement with the Department  
19 whereby Respondent agreed to certain terms regarding dwelling cost estimates.

20 41. Respondent's settlement agreement with the Department referenced Respondent's  
21 assurance that Respondent would implement the cost estimator in the following manner:

22 The "Coverage A" replacement cost will be calculated using  
23 RCT standardized version, which requires property-specific  
24 data. In the absence of property-specific data, RCT will  
25 utilize its knowledge-base to determine the property  
26 characteristics based on the location, style, size and age of  
27 the property. [Respondent] will use reasonable efforts to  
28 obtain from the applicant and public records specific  
property characteristics used in RCT to determine the  
Coverage A replacement cost and will rely on the RCT  
knowledge-base where necessary.

- 1 42. Respondent collects property-specific dwelling information, including square footage and  
2 year built, from policyholders in their original application and in a 2009 dwelling survey.
- 3 43. Respondent also uses property-specific dwelling data, including square footage and year  
4 built, provided by various third-party vendors such as “Marshall & Swift/Boeckh,” and  
5 “Myriad.”
- 6 44. When the square footage or year built information conflicts between one or more sources,  
7 Respondent chooses which source is applicable.
- 8 45. If the policyholder believes that the Respondent’s chosen source is inaccurate, the  
9 Respondent requires the policyholder to produce “a current real estate appraisal report, county  
10 assessor’s office record, or a licensed building contractor or engineer’s report” in order to  
11 dispute the Respondent’s chosen data source.
- 12 46. Respondent is bound by the 2008 settlement agreement whereby Respondent agreed to  
13 use “reasonable efforts” to obtain from the applicant and public records specific property  
14 characteristics used to determine the rates and/or premiums.
- 15 47. In violation of the settlement agreement, Respondent does not use “reasonable efforts” to  
16 determine accurate property-specific dwelling characteristics because, when confronted with a  
17 discrepancy, Respondent requires the policyholder to incur financial and temporal costs in  
18 order to settle the discrepancy.
- 19 48. When Respondent is aware of conflicting dwelling data, Respondent makes no attempt to  
20 investigate or resolve the conflict, and chooses the information which forms the basis for the  
21 highest rates and/or premiums. The Respondent therefore violates its duty under CCR section  
22 2360.4 to “determine and charge the lowest Premium for which an insured qualifies.”
- 23 49. When Respondent’s chosen source of data is inaccurate and Respondent ignores other  
24 accurate data that would qualify the policyholder for a lower rate and/or premium,  
25 Respondent violates CCR section 2360.3.
- 26  
27  
28



**ALLEGATION IV:**  
**RESPONDENT ROUTINELY ADJUSTS PREMIUM RATES MID-TERM AND**  
**CANCELS POLICIES FOR NONPAYMENT OF PREMIUM WHEN**  
**POLICYHOLDERS REFUSE TO PAY THE MID-TERM INCREASE, IN**  
**VIOLATION OF INSURANCE CODE SECTION 676.**

50. Following a settlement agreement with the Department in October, 2008, Respondent began using a new replacement cost calculator called the Marshall & Swift/Boeckh Residential Component Technology (“RCT”).
51. In an effort to properly implement the RCT cost calculator, Respondent delivers to its policyholders a Dwelling Survey form in order to obtain the necessary information about a policyholder’s home.
52. In addition to the Dwelling Survey, Respondent creates and delivers to the policyholder a Property Details sheet which identifies the characteristics of the policyholder’s home that were used to establish the replacement cost for the home. To the extent that the policyholder determines that the Property Details sheet is inaccurate, Respondent invites the policyholder to correct the Property Details sheet.
53. Based upon information received either in the Dwelling Survey or the Property Details sheet, Respondent adjusts the policyholder’s premium mid-term for some policyholders. This attempted adjustment to the premium often occurs after a renewal notice has already issued to the policyholder and often seeks a premium amount that is greater than the premium amount quoted in the renewal notice.
54. If a policyholder refuses to pay the additional premium amount Respondent seeks, Respondent attempts to cancel the policy for nonpayment of premium.
55. Respondent engages in a routine business practice of adjusting policyholder premiums well after the start of the policy term.
56. For new business, Respondent often adjusts the premium more than 60 days after the policy has been in effect for reasons that are not related to a physical change in the insured property or a change in the property’s occupancy or use.
57. For renewal business, Respondent adjusts some policyholders’ premium after the effective date of the policy for reasons that are not related to a physical change in the insured property

or a change in the property's occupancy or use.

58. If a policyholder refuses to pay the additional premium sought by Respondent, Respondent cancels the policy mid-term.

59. Because Respondent cancels policies mid-term for reasons other than those permitted by CIC section 676, Respondent's practice is in violation of that statute.

#### **ALLEGATION V:**

#### **RESPONDENT MAKES MID-TERM PREMIUM INCREASES RETROACTIVE BASED UPON ADJUSTMENTS TO THE POLICY LIMIT, IN CONTRAVENTION OF THE EXPRESS TERMS OF RESPONDENT'S POLICY AND IN VIOLATION OF INSURANCE CODE SECTIONS 1861.05(b) AND 790.06.**

60. Based upon a review of the Dwelling Survey responses received from policyholders, the Property Details sheet, and the output of the RCT cost calculator, Respondent commonly recalculates the dwelling replacement cost for some policyholders in order to adjust the coverage limit for insured dwellings.

61. In the event that Respondent determines that a policyholder's coverage limit should be increased, as a pattern and practice, Respondent increases the coverage limit for the policyholder's policy mid-term and assesses the policyholder for any increase in the premium. Respondent revises the coverage limit increase and assesses the resulting increase in premium charge retroactively to the beginning of the policy term.

62. The "CONDITIONS" portion of Respondent's Comprehensive Policy contract and Respondent's Standard Policy contract both read, in part, as follows:

**Maintaining Policy Limits.** The minimum single limit of liability required is based on the estimated full replacement cost of the dwelling at the time of the loss. Annually this single limit of liability will be reviewed by you and, when necessary, adjusted to reflect the current estimated replacement cost for dwellings in your area. If the single limit of liability is less than the actual full replacement cost of the dwelling, you must notify us and request an increase in the single limit of liability. It is your responsibility to maintain an adequate single limit of liability above the estimated full replacement cost of the dwelling for other coverages provided by this policy. You may request adjustment of the amount of insurance at any time. Any premium change will be calculated in proportion to the time remaining in the policy period.

- 1
- 2 63. As is quoted above, Respondent's filed rating rules include a provision under the heading
- 3 "Maintaining Policy Limits" which reads: "Any premium change will be calculated in
- 4 proportion to the time remaining in the policy period."
- 5 64. Respondent engages in a pattern and practice of adjusting policy limits mid-term, and then
- 6 charging the policyholder additional premium based upon an adjustment to the policy limit
- 7 that is calculated retroactively to the start of the policy period.
- 8 65. Because Respondent calculates the premium adjustments retroactively to the beginning of
- 9 the policy period, Respondent violates the express warranty contained in Respondent's policy.
- 10 66. Because Respondent is charging its rates in a manner that is contrary to Respondent's
- 11 filed rating rules, Respondent has instituted an unapproved rate, in violation of Insurance
- 12 Code section 1861.05(b).
- 13 67. Because Respondent is engaged in a practice that conflicts with Respondent's filed rating
- 14 rules, Respondent's practice also constitutes an unfair or deceptive practice, in violation of
- 15 Insurance Code section 790.06.

16 **ALLEGATION VI:**

17 **RESPONDENT REJECTS PARTIALLY-COMPLETED DWELLING SURVEY**

18 **FORMS *IN TOTO*, THEREBY VIOLATING INSURANCE CODE SECTION**

19 **1861.05 (a) AND (b) AND CONTRADICTING RESPONDENT'S FILED AND**

20 **STIPULATED AGREEMENT TO USE PROPERTY-SPECIFIC DATA WHEN**

21 **AVAILABLE.**

- 22 68. Respondent entered into an agreement with the Department in October, 2008 that required
- 23 Respondent to use property-specific data, when available, to determine a policyholder's
- 24 property characteristics.
- 25 69. Respondent routinely receives Dwelling Surveys from policyholders that contain
- 26 property-specific data. Some of the surveys are returned to Respondent only partially-
- 27 completed.
- 28 70. As a matter of routine practice and procedure, Respondent disregards the information
- contained on a partially-completed Dwelling Survey.

- 1 71. Respondent collects Dwelling Survey information from policyholders in order to ensure  
2 that property-specific data are considered in the RCT cost estimator.
- 3 72. In October of 2008, Respondent entered into a settlement agreement with the Department  
4 whereby Respondent agreed to use the RCT cost estimator when estimating property values  
5 for minimum coverage limits.
- 6 73. Respondent's settlement agreement with the Department referenced Respondent's  
7 assurance that Respondent would implement the RCT cost estimator in the following manner:  
8  
9 The "Coverage A" replacement cost will be calculated using  
10 RCT standardized version, which requires property-specific  
11 data. In the absence of property-specific data, RCT will  
12 utilize its knowledge-base to determine the property  
13 characteristics based on the location, style, size and age of  
14 the property. [Respondent] will use reasonable efforts to  
15 obtain from the applicant and public records specific  
16 property characteristics used in RCT to determine the  
17 Coverage A replacement cost and will rely on the RCT  
18 knowledge-base where necessary.
- 19 74. After the Department presented to Respondent complaints from policyholders which  
20 revealed that Respondent had ignored some Dwelling Survey forms in their entirety,  
21 Respondent stated its practice as follows:  
22  
23 "[Respondent's] standard practice is not to use incomplete  
24 survey information to calculate the property's replacement  
25 cost...In the absence of property-specific data, Marshall &  
26 Swift/Boeckh's Residential Component Technology utilizes  
27 its knowledge-base to determine the property characteristics  
28 based on the location, style, size and age of the property."
75. Because Respondent routinely disregards policy-specific data when such data is reported  
on a partially-completed survey, Respondent is engaged in a practice that is contrary to the  
procedure filed with the Department. Respondent's practice of calculating replacement cost  
in a manner that is contrary to the agreed-upon procedure constitutes an unapproved rate  
change, in violation of Insurance Code section 1861.05(b).
76. By using information provided in completed Dwelling Survey forms to calculate  
replacement cost for some policyholder residences while ignoring Dwelling Survey forms *in*

1 *toto* for those policyholders that do not complete the forms in their entirety, Respondent is  
2 engaged in an unfairly discriminatory practice, in violation of Insurance Code section  
3 1861.05(a).

4 **ALLEGATION VII:**  
5 **RESPONDENT'S CLASSIFICATION OF BASEMENTS AS A STORY AND CRAWL**  
6 **SPACE AS A BASEMENT WAS NOT APPROVED AND VIOLATES CIC SECTIONS**  
7 **1861.05(a) AND (b) BECAUSE IT DEBITS BASEMENTS AS A STORY AND CRAWL**  
8 **SPACE AS A BASEMENT.**

9 77. On or before April, 2009, Respondent started to charge a debit for a basement under the  
10 Number of Levels risk characteristic in calculating the premium.

11 78. On or before April, 2009, Respondent started to charge a Foundation Type debit for a  
12 basement in contravention of Respondent's filed rating rule for the Foundation Type risk  
13 characteristic.

14 79. The filed and approved Foundation Type debit is only applicable to the following types of  
15 crawl space: "crawl space with closed concrete with no cripple wall or basement."

16 80. Respondent is charging policyholders twice for the same risk by charging under the  
17 Number of Levels and Foundation Type risk characteristic. This could lead to a policyholder  
18 being charged debits totaling 30%.

19 81. On or before April 2009, Respondent debited 15% for a basement under Foundation Type  
20 and 25% for a basement under Number of Levels for the same property.

21 82. Because Respondent did not file for, or receive approval for this practice, Respondent is in  
22 violation of CIC section 1861.05(b).

23 83. Because Respondent charges policyholders twice for basements using both the Foundation  
24 Type debit and Number of Levels debit, Respondent is engaged in an unfairly discriminatory  
25 practice, in violation of CIC section 1861.05(a).

26 84. Because Respondents charge policyholders twice for basements using both the Foundation  
27 Type debit and Number of Levels debit, Respondent is charging an excessive rate, in violation  
28 of CIC section 1861.05(a).

**ALLEGATION VIII:**  
**RESPONDENT'S USE OF AMBIGUOUS SLOPE DESIGNATIONS TO DEBIT**  
**POLICYHOLDERS VIOLATES CIC SECTION 1861.05(a).**

85. Respondent's Construction Debits and Credits table include only four categories for slope. These are Flat (0 degrees), Gentle (1-20 degrees), Medium or Steep (greater than 20 degrees) and unknown.
86. Respondent's Dwelling Survey forms that are sent to policyholders for rating purposes have five categories for slope. These categories are Flat (0 degrees), Minimal (1-15 degrees), moderate (16-30 degrees), steep (31-40 degrees) or very steep (greater than 45 degrees).
87. Respondent's definition of moderate in its Dwelling Survey overlaps with its definitions of gentle and medium or steep slope in its Construction Debits and Credits. Respondent's overlap of its Dwelling Survey and its rating manual could lead to a premium increase of 25% depending on the year the house was built.
88. Respondent automatically rates a dwelling with its highest debit (unknown) a 20% premium increase, if the Dwelling Survey is deemed incomplete.
89. Respondent does not provide its policyholders with the proper tools to measure slope. The Respondent also does not advise policyholders that if the Dwelling Survey is not completed, that dwelling will be rated with the highest debit. Respondent's practice caused a 15% increase to a policyholder's premium. For example, Respondent erroneously changed a renewal policy from flat to unknown increasing the policy amount by \$237.
90. Respondent's use of a Dwelling Survey form that does not correspond to Respondent's filed Construction Debits and Credits table results in an unfairly discriminatory application of Respondent's rates, in violation of CIC section 1861.05(a).
91. Respondent's election to impose the highest possible debit to policyholders with incomplete Dwelling Survey forms results in excessive rates in violation of CIC section 1861.05(a).

**ALLEGATION IX:**  
**RESPONDENT'S REFUSAL TO RETURN UNEARNED PREMIUM FROM PAST YEARS VIOLATES CIC SECTION 1861.05(a).**

92. CIC section 1861.05(a) requires that no rate shall remain effect which is excessive.
93. Code of Civil Procedure section 337 provides that, where the action for the recession involves fraud or mistake, the time to bring an action does not begin to run until discovery by the aggrieved party of the facts constituting the fraud or mistake.
94. Code of Civil Procedure section 343 provides that an action for relief must be commenced within four years after the cause of action has accrued.
95. Respondent does not return premium for legitimate policy cancellation requests or premium overcharge correction requests by more than one year from the date that Respondent is notified of the request or receives documentation verifying the overcharge.
96. In January 2007, Respondent was notified that its policyholders sold their house in May 2005. The escrow documents provided to Respondent confirmed that the house was sold in July 2005. Respondent refunded premium back to May 2006 only, as is its practice.
97. In July 2008, Respondent's policyholder discovered that Respondent had used the wrong date of construction thereby incorrectly calculating the policyholder's premium. The house had been insured with Respondent since July 2005. Respondent refunded the overcharge back to July 2007 only.
98. Respondent's failure to return any overcharges that occurred more than one year ago is in violation of CIC section 1861.05.

**ALLEGATION X:**  
**RESPONDENT'S REFUSAL TO REFUND UNEARNED PREMIUMS WITHIN THE REQUIRED 25 DAYS VIOLATES CIC SECTION 481.5(a).**

99. CIC section 481.5(a) requires that when coverage under a policy of personal lines insurance is reduced for any reason, the insurer will refund the money within 25 business days after the insurer receives notice of the event.

1 100. As a pattern and practice, Respondent does not refund any overage/unearned premium  
2 unless the overage exceeds the total annual premium and that annual premium has been  
3 paid.

4 101. Respondent retains the overage/unearned premium until the next installment payment  
5 is due and applies it at that time.

6 102. Respondent does not return the overage/unearned premium even when the  
7 policyholder specifically requests that the overage/unearned premium be returned.

8 103. Respondent's failure to return any additional premium even when specifically  
9 requested by the policyholder, is in violation of CIC section 481.5(a).

10  
11 **RELIEF REQUESTED**

12 118. **RESPONDENT IS HEREBY NOTIFIED** that, to the extent Respondent's unlawful  
13 practices are ongoing at the time of delivery of this notice, the noncompliance referred to  
14 herein must be corrected within twenty (20) days of receipt of this notice. For each  
15 allegation listed above, proof of system-wide correction, or other response permitted by  
16 California Insurance Code section 1858.1, must also be provided within twenty (20) days  
17 of receipt of this notice.

18 119. **RESPONDENT IS FURTHER NOTIFIED** that if Respondent fails to make an  
19 adequate or timely response, a public hearing will be set pursuant to California Insurance  
20 Code sections 1858.2 and 1858.3. If, at the conclusion of the hearing, the Commissioner  
21 finds that the facts as alleged above have occurred and that these facts constitute violations  
22 of the applicable sections of the Insurance Code and/or Code of Regulations, as set forth,  
23 he may issue an order for payment of money penalties and any other corrective action as  
24 he may deem appropriate.

25 120. **RESPONDENT IS FURTHER NOTIFIED** that if the noncompliance referred to  
26 above constitutes willful acts involving the use of rates, rating plans, and/or rating systems  
27 in violation of Chapter 9, Part 2, Division 1 of the California Insurance Code, pursuant to  
28 section 1858.07 of the California Insurance Code, the imposition of civil penalties will be



sought in the amount of \$10,000.00 for each act. This Notice may be amended to set forth additional willful acts in violation of Chapter 9, Part 2, Division 1, of the California Insurance Code and to seek additional penalties therefor in the amount of \$10,000.00 for each act.

121. **RESPONDENT IS FURTHER NOTIFIED** that, alternatively, in the event that those acts involving the use of rates, rating plans, and/or rating systems in violation of Chapter 9, Part 2, Division 1 of the California Insurance Code are not found to be willful violations of that chapter, then pursuant to California Insurance Code section 1858.07, the imposition of civil penalties will be sought in the amount of \$5,000.00 for each act. The Commissioner further reserves the right to seek any other penalties provided for under California Insurance Code section 1858.07 in the event that the acts set forth above, or such acts as may be alleged upon amendment hereof, were inadvertent.

122. **RESPONDENT IS FURTHER NOTIFIED** that, to the extent that the unlawful practices referenced within this Notice of Noncompliance demonstrate that Respondent has conducted its business fraudulently or has not carried out its contracts in good faith within the meaning of California Insurance Code section 704, the Commissioner may suspend Respondent's certificate of authority for a period of not more than one year.

123. The California Department of Insurance reserves the right to amend this Notice of Noncompliance, as new facts become available.

Dated: February 27, 2012.

CALIFORNIA DEPARTMENT OF INSURANCE

By \_\_\_\_\_/S/  
Bryant W. Henley  
Assistant Chief Counsel